

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Phillip Symonds)	
Darda Troyer)	File No. EB-08-DT-0176
d.b.a Flat River Discount Electronics)	
)	
And)	Citation No. C200832360010
)	
Hi-Delite Restaurant, Inc.)	
)	
)	
Greenville, Michigan)	
)	

CITATION

Released: July 29, 2008

By the District Director, Detroit Office, Northeast Region, Enforcement Bureau:

This is an official Citation issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (“Act”),¹ to Phillip Symonds and Darda Troyer d.b.a. Flat River Discount Electronics and Hi-Delite Restaurant, Inc. (referred to herein jointly as “Flat River”) for violation of Section 302(b) of the Act,² and Sections 2.803(a)(1), 2.815(b) and 2.815(c) of the Commission’s Rules (“Rules”).³

1. Investigation by the Enforcement Bureau’s Detroit Office revealed that, on July 10, 2008, Flat River offered for sale the following non-certified Citizens Band (“CB”) transceivers at its store in Greenville, Michigan: Ranger Model RCI 2950; Galaxy Model DX44V; Connex Model 3300. According to the Commission’s records, these devices have not received an FCC equipment authorization, which is required for Citizens Band transmitters marketed in the United States.

2. Section 302(b) of the Act provides that “No person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(1) of the Rules provides that “... no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless: (1) In the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled....” Flat River’s offering for sale of the transceivers listed in paragraph 2 violates both sections.

3. Although Flat River marketed the devices listed in paragraph 2 as amateur 10 meter radios, the Commission has evaluated devices similar to those at issue and concluded they fall within the

¹ 47 U.S.C. § 503(b)(5)

² 47 U.S.C. § 302a(b)

³ 47 C.F.R. §§ 2.803(a)(1), 2.815(b), 2.815(c)

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definition of a CB transmitter because they can easily be configured to operate on CB frequencies.⁴ Additionally, we note that dual use CB and amateur radios of the kind at issue here may not be certificated under the Rules.⁵

4. Also on July 10, 2008, agents found that Flat River offered for sale at its store in Greenville, Michigan, the following non-certified External Radio Frequency Power Amplifier: Texas Star Model DX250 HDV. Section 2.815(c) of the Rules prohibits the manufacture, sale, or offering for sale of any External Radio Frequency Power Amplifier (or amplifier kits) capable of operation on any frequency below 144 MHz unless the amplifier has received a grant of type acceptance.⁶ Furthermore, Section 2.815(b) of the Rules prohibits the sale or marketing of External Radio Frequency Power Amplifiers (or amplifier kits) capable of operating on any frequency between 24 and 35 MHz.⁷ Flat River's offering for sale of the non-certified External Radio Frequency Power Amplifier violates both sections of the Rules and Section 302(b) of the Act.

5. Violations of the Act or the Rules may subject the violator to substantial monetary forfeitures,⁸ seizure of equipment through *in rem* forfeiture action, and criminal sanctions including imprisonment.⁹

6. Flat River may request a personal interview at the closest FCC Office, which is Federal Communications Commission, 24897 Hathaway Street, Farmington Hills, Michigan 48335-1552.¹⁰ You may contact this office by telephone, (XXX) XXXX-XXXX to schedule this interview, which must take place within 14 days of the Citation. Flat River may also submit a written statement to the above address within 14 days of the date of this Citation. Any written statement should specify what actions have been taken to correct the violations outlined above. Please reference case number EB-08-DT-0176 when corresponding with the Commission.

7. Any statement or information provided by you may be used by the Commission to determine if further enforcement action is required.¹¹ Any knowingly or willfully false statement made in reply to this Citation is punishable by fine or imprisonment.¹²

⁴ See Letter from Christopher Wright, General Counsel, FCC to John Atwood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC, 1999). See also definition of CB transmitter, 47 C.F.R. § 95.603(b) ("transmitter that operates or is intended to operate at a station authorized for the CB service").

⁵ 47 C.F.R. 95.655(a); see also *Amendment of Part 95, Subpart E, Technical Regulations in the Personal Radio Service Rules*, Order, 3 FCC Rcd 5032 (1988). This clarification was added to explicitly foreclose the possibility of certification of dual use CB and amateur radios, see *id.*, and thereby deter use by CB operators of frequencies allocated for amateur radio use.

⁶ 47 C.F.R. § 2.815(c).

⁷ 47 C.F.R. § 2.815(b).

⁸ See 47 C.F.R. § 1.80(b)(3).

⁹ See 47 U.S.C. §§ 401, 501, 503, 510.

¹⁰ 47 U.S.C. § 503(b)(5).

¹¹ See Privacy Act of 1974, 5 U.S.C. § 552(e)(3).

¹² See 18 U.S.C. § 1001 *et seq.*

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8. **IT IS ORDERED** that copies of this Citation shall be sent by First Class U.S. Mail and Certified Mail, Return Receipt Requested to Phillip Symonds at his address of record, Darda Troyer at his address of record, and Hi-Delite Restaurant, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

James A. Bridgewater
District Director
Detroit Office
Northeast Region
Enforcement Bureau